

Introduced by Senator Padilla

February 19, 2010

An act to amend Sections 2889.4, 2889.5, and 2894 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1462, as introduced, Padilla. Public utilities: local exchange carriers.

Existing law regulating the provision of telecommunications services requires a local exchange service provider to provide prescribed consumer protections relating to pay-per-use telephone service features and verification of changes in service providers.

This bill would revise those provisions to refer to local exchange carriers instead of local exchange service providers.

Under existing law, the disclosure of any information by an interexchange telephone corporation, a local exchange telephone corporation, or a provider of commercial mobile radio service, as defined, in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request of a law enforcement official or other federal, state, or local governmental agency for law enforcement purposes, is a complete defense against specified civil actions for the wrongful disclosure of that information.

This bill would revise that reference to a local exchange telephone corporation to, instead, refer to a local exchange carrier.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2889.4 of the Public Utilities Code is amended to read:

2889.4. (a) A local exchange ~~service provider~~ *carrier* that offers and charges for pay per use features that do not require an access code to be dialed to activate the service shall provide a new residential subscriber, including an existing residential customer ordering an additional line, during the verbal service order process, with information about those features. The representatives of a ~~provider~~ *carrier* shall offer that subscriber blocking options for those features.

(b) (1) A local exchange ~~service provider~~ *carrier* that offers the features described in subdivision (a) shall advise an existing residential subscriber who inquires about the features, or who seeks a bill adjustment for the inadvertent or unauthorized use of those per use custom calling features, that the features can be blocked and shall inquire as to whether the subscriber would like to block any or all of the features.

(2) (A) A local exchange ~~service provider~~ *carrier* that offers the features described in subdivision (a) shall provide notice to all existing residential subscribers not later than May 1, 2000, describing all features provided on a per use basis, the charge for each activation, any additional usage or other charges, and detailed information about the ability to block these features.

(B) The notice shall contain a toll-free number for further information and shall contain a noticeable postcard size bill insert that may be returned in the subscriber's bill envelope if they wish to block any or all of the per use features described in subdivision (a).

(c) A local exchange service subscriber that has not blocked per use features in accordance with this section is entitled to a one-time bill adjustment ~~which~~ *that* shall equal the sum of the charges for every incident that occurred during the first billing cycle pursuant to which the subscriber notifies the local exchange ~~service provider~~ *carrier* that inadvertent or unauthorized activation occurred with regard to those per use services that do not require coded dialing to activate. The one-time bill adjustment shall include an adjustment for any additional usage charges occurring as a result of inadvertent or unauthorized activation. The adjustment shall

1 take the form of a credit to the subscriber's account if the existing
2 technology or facilities of the local exchange ~~service provider~~
3 *carrier* measure usage and permit a usage credit to be determined
4 and provided.

5 (d) Nothing in this section prohibits a local exchange ~~service~~
6 ~~provider~~ *carrier* from providing additional bill adjustments at its
7 discretion in connection with charges imposed for features
8 described in subdivision (a).

9 SEC. 2. Section 2889.5 of the Public Utilities Code is amended
10 to read:

11 2889.5. (a) ~~No~~ A telephone corporation, or any person, firm,
12 or corporation representing a telephone corporation, shall *not* make
13 any change or authorize a different telephone corporation to make
14 any change in the provider of any telephone service for which
15 competition has been authorized of a telephone subscriber until
16 all of the following steps have been completed:

17 (1) The telephone corporation, its representatives or agents shall
18 thoroughly inform the subscriber of the nature and extent of the
19 service being offered.

20 (2) The telephone corporation, its representatives or agents shall
21 specifically establish whether the subscriber intends to make any
22 change in his or her telephone service provider, and explain any
23 charges associated with that change.

24 (3) For sales of residential service, the subscriber's decision to
25 change his or her telephone service provider shall be confirmed
26 by an independent third-party verification company, or as provided
27 in paragraph (5). For purposes of this provision, the confirmation
28 by a third-party verification company shall be made as follows:

29 (A) The third-party verification company shall meet each of the
30 following criteria:

31 (i) Be independent from the telephone corporation that seeks to
32 provide the subscriber's new service.

33 (ii) Not be directly or indirectly managed, controlled, or directed,
34 or owned wholly or in part, by the telephone corporation that seeks
35 to provide the new service or by any corporation, firm, or person
36 who directly or indirectly manages, controls, or directs, or owns
37 more than 5 percent of the telephone corporation.

38 (iii) Operate from facilities physically separate from those of
39 the telephone corporation that seeks to provide the subscriber's
40 new service.

1 (iv) Not derive commissions or compensation based upon the
2 number of sales confirmed.

3 (B) The telephone corporation seeking to verify the sale shall
4 do so by connecting the subscriber by telephone to the third-party
5 verification company or by arranging for the third-party verification
6 company to call the subscriber to confirm the sale.

7 (C) The third-party verification company shall obtain the
8 subscriber's oral confirmation regarding the change, and shall
9 record that confirmation by obtaining appropriate verification data.
10 The record shall be available to the subscriber upon request.
11 Information obtained from the subscriber through confirmation
12 shall not be used for marketing purposes. Any unauthorized release
13 of this information is grounds for a civil suit by the aggrieved
14 subscriber against the telephone corporation or its employees who
15 are responsible for the violation.

16 (D) Notwithstanding subparagraphs (A), (B), and (C), a service
17 provider shall not be required to comply with these ~~provisions~~
18 *verification requirements* when the customer directly calls the
19 local service provider to make changes in service providers.
20 However, a service provider shall not avoid the verification
21 requirements by asking a subscribing customer to contact a local
22 exchange-service ~~provider~~ *carrier* directly to make any change in
23 the service provider. A local exchange-service ~~provider~~ *carrier*
24 shall be required to comply with these verification requirements
25 for its own competitive services. However, a local exchange-service
26 ~~provider~~ *carrier* shall not be required to perform any verification
27 requirements for any changes solicited by another telephone
28 corporation.

29 (4) For a sale of residential service, the telephone corporation
30 seeking to verify the change in service, in addition to the
31 requirements of paragraph (3), shall notify the subscriber by United
32 States Postal Service that the subscriber's telephone service
33 provider has been changed. The service provider that initiated the
34 change shall send that notice within 14 days of the date of the
35 change. The notice shall provide the subscriber with clear, legible
36 notice of the change in service provider, and shall include a
37 customer service telephone number for the subscriber to call if the
38 subscriber did not authorize the change in service.

39 (5) Confirmation of a sale of residential service may be made
40 using an electronic means that complies with Section 64.1120 of

1 Title 47 of the Code of Federal Regulations in effect as of June
2 17, 2008.

3 (6) For sales of all nonresidential services, the subscriber's
4 decision to change his or her service provider shall be confirmed
5 through any of the following means:

6 (A) Independent third-party verification, as set forth in paragraph
7 ~~(3) of subdivision (a).~~

8 (B) The telephone corporation shall mail to the subscriber an
9 information package seeking confirmation of his or her change in
10 the telephone corporation. The information package shall describe
11 the new service and shall include a postage prepaid postcard or
12 mailer that the subscriber can use to deny, cancel, or confirm a
13 service order, as soon as possible, and wait 14 days after the
14 information package is mailed before making the change in the
15 telephone corporation. The telephone corporation shall make the
16 change only if the subscriber does not cancel the change in service
17 order.

18 (C) Verify the subscriber's change in his or her telephone service
19 provider by obtaining the subscriber's signature on a document
20 fully explaining the nature and extent of the action. The document
21 shall be a separate document ~~whose~~, *the sole purpose of which* is
22 to explain the nature and extent of the action.

23 (D) Obtain the subscriber's authorization through an electronic
24 means that takes the information, including the calling number,
25 and confirms the change to which the subscriber has given his or
26 her consent.

27 (7) Where the telephone corporation obtains a written order for
28 service, the document shall thoroughly inform the subscriber of
29 the nature and extent of the action. The subscriber shall be
30 furnished with a copy of the signed document. The subscriber by
31 his or her signature on the document shall indicate a full
32 understanding of the relationship being established with the
33 telephone corporation. If a written subscriber solicitation or other
34 document contains a letter of agency authorizing a change in
35 service provider, in combination with other information including,
36 but not limited to, inducements to subscribers to purchase service,
37 the solicitation shall include a separate document ~~whose~~, *the sole*
38 *purpose of which* is to explain the nature and extent of the action.
39 If any part of a mailing to a prospective subscriber is in language
40 other than English, any written authorization contained in the

1 mailing shall be sent to the same prospective subscriber in the
2 same language.

3 (8) The telephone corporation shall retain a record of the
4 verification of the sale for at least one year. These records shall
5 be made available to the subscriber, the Attorney General, or the
6 commission upon request.

7 (b) If a residential or business subscriber that has not signed an
8 authorization notifies the telephone corporation within 90 days
9 that he or she does not wish to change telephone corporations, the
10 subscriber shall be switched back to his or her former telephone
11 corporation at the expense of the telephone corporation that
12 initiated the change.

13 (c) For purposes of this section, competitive services are those
14 services where subscribers have the ability to presubscribe to a
15 telephone service provider.

16 (d) When a subscriber changes telephone service providers, the
17 change shall be conspicuously noticed on the subscriber's bill.
18 Notice in the following form is deemed to comply with this
19 subdivision:

20 "NOTICE: Your local (or long distance) telephone service provider
21 has been changed from (name of prior provider) to (name of current
22 provider).

23 Cost of change: \$ ____."

24 (e) Any telephone corporation that violates the verification
25 procedures described in this section shall be liable to the telephone
26 corporation previously selected by the subscriber in an amount
27 equal to all charges paid by the subscriber after the violation.

28 (f) In addition to the liability described in subdivision (e), any
29 telephone corporation that violates the verification procedures
30 described in this section shall credit to a subscriber any charges
31 paid by the subscriber in excess of the amount that the subscriber
32 would have been obligated to pay had the subscriber's telephone
33 service not been changed. The commission shall adopt regulations
34 to govern credits to subscribers pursuant to this subdivision.

35 (g) The remedies provided by this section are in addition to any
36 other remedies available by law.

37 (h) As described in federal law, no telephone corporation, or
38 any person, firm, or corporation representing a telephone
39 corporation, shall make any change or authorize a different
40 telephone corporation to make any change in the provider of any

1 telephone service for which competition has been authorized of a
2 telephone subscriber without having on file, or having instituted
3 reasonable steps designed to obtain, signed, dated orders for service
4 from the subscriber. All orders shall be in the form prescribed in
5 federal law for letters of agency. As described in federal law, the
6 telephone corporation is responsible for charges associated with
7 disputed changes in telephone service for which it cannot produce
8 a signed, dated order for service from the subscriber. This
9 subdivision applies to all intrastate services for which competition
10 has been authorized.

11 SEC. 3. Section 2894 of the Public Utilities Code is amended
12 to read:

13 2894. (a) Notwithstanding subdivision (e) of Section 2891,
14 the disclosure of any information by an interexchange telephone
15 corporation, a local exchange ~~telephone corporation~~ *carrier*, or a
16 provider of commercial mobile radio service, as defined in Section
17 216.8, in good faith compliance with the terms of a state or federal
18 court warrant or order or administrative subpoena issued at the
19 request of a law enforcement official or other federal, state, or
20 local governmental agency for law enforcement purposes, is a
21 complete defense against any civil action brought under this chapter
22 or any other law, including, but not limited to, Chapter 1.5
23 (commencing with Section 630) of Part 1 of Title 15 of *Part 1 of*
24 the Penal Code, for the wrongful disclosure of that information.

25 (b) As used in this section the following terms have the
26 following meanings:

27 (1) "Interexchange telephone corporation" means a telephone
28 corporation that is a long-distance carrier.

29 (2) "Local exchange ~~telephone corporation~~ *carrier*" means a
30 telephone corporation that provides local exchange services.